

IN THE TOWN PLANNING APPEAL BOARD
APPEAL NO. 25 OF 2003

BETWEEN

LIU CHEONG WING
LIU CHEONG MING
LIU CHEONG FAT
LIU CHEONG SAN

Appellants

-v-

THE TOWN PLANNING BOARD

Respondent

Date of hearing : 13th December, 2004

Date of Decision : 7th February, 2005

Panel : Mr Ronny Wong F.H. Wong, SC, JP (Chairman)
Mr Tony Luk Ka-luen
Ms Sylvia Siu Wing-yee
Mr Tam Kar-chuen
Mr Herman To Yung-sing

DECISION

1. This is the appeal of the Appellants against the decision of the Town Planning Board dated 26th September, 2003 whereby the Town Planning Board confirmed the rejection by the Rural and New Town Planning Committee ["RNTPC"] of the Appellants' application to use Lots 1433 R.P. (Part), 1456 (Part) and 1458RP (Part)

["the Site"] together with adjoining Government Land in D.D. 52, Wa Shan Village, Sheung Shui for temporary container freight area for a period of 3 years.

2. The Site is of an area of about 418 m². To its immediate east is a piece of fallow agricultural land. To its south are some vacant structures, some domestic structures, two orchards and some fallow agricultural land. Vacant and fallow agricultural lands can be found to its west. The adjoining Government Land is about 650 m². The Appellants had been using the Site and the adjoining Government Land as a container freight area for transferring goods from one container to another.
3. The Site falls within an area zoned "GB" on the approved Fu Tei Au and Sha Ling OZP No. S/NE-FTA/5. The planning intention of the "GB" or "Green Belt" zone is to promote conservation of the natural environment, to safeguard it from encroachment by urban type development, and to provide additional outlets for passive recreational activities. According to the Notes of the OZP, temporary use or development of any land or building not exceeding a period of three years requires permission of the Town Planning Board notwithstanding that the use or development is not provided for in terms of the OZP.
4. Minor revisions had been made to OZP No. S/NE-FTA/5. On 12th November, 2004, the Chief Executive in Council approved plan S/NE-FTA/7. The Site remains within the "GB" zone in that plan.
5. The application is opposed by various Government departments.
 - (a) The Planning Department objects on the basis that the Site is within the "GB" zone in Wa Shan. The Site and its surrounding areas were wooded before. Tree felling had taken place within the Site and its surrounding areas. Approval of this application will set a precedent for development of similar

nature and attract more tree felling for site clearance without permission.

- (b) The Transport Department is of the view that the access road to the Site is a narrow track less than 4 m wide with dilapidated road surface and without footpath and is highly undesirable for heavy goods vehicles as well as container vehicles from both traffic and safety viewpoints. Although the number of container vehicles travelling to the Site is small as estimated by the Appellants, the access road is not suitable for container vehicles.
 - (c) The Water Supplies Department notes that the container vehicles will go in and out of the Site through the maintenance access of the Nam Chung Aqueduct. The Water Supplies Department objects to the application as the track is not designed for heavy traffic loading and is not suitable for use by heavy vehicles like container trailers/tractors. Furthermore, the frequent manoeuvring of heavy vehicles in the area will likely affect the integrity of the Nam Chung Aqueduct and the normal inspection and maintenance activities of that department.
6. The Town Planning Board and the RNTPC rejected the Appellants' application for the following reasons :
- (a) The use under application was not in line with the planning intention of the "GB" zone for the area which was primarily to promote conservation of the natural environment, to safeguard it from encroachment by urban type development, and to provide additional outlets for passive recreational activities. No strong justification had been provided in the submission for a departure from the planning intention even on a temporary basis.
 - (b) The development did not comply with the Town Planning Board Guidelines for "Application for Open Storage and Port Back-up Uses" in that it was not compatible with the rural and residential character of the surrounding areas.

- (c) There was no information in the submission to demonstrate that the access road leading to the application site was adequate to cater for the container vehicles traffic generated by the development.
 - (d) The approval of the application would set an undesirable precedent for other similar applications. The cumulative effect of approving such similar applications would result in a general degradation of the environment of the area.
7. Ms. Shen Shu O [“Ms. Shen”] appeared before us on behalf of the Appellants. She told us that the Appellants are in serious financial difficulties. They could not obtain public assistance in view of their ownership of the Site. Their entire livelihood rests on the prospect of obtaining approval for their container freight area. She said she discussed their operations with villagers in the neighbourhood and they did not voice any serious objection to their continued existence.
8. The Respondent called Mr. Yip Po Kwong [“Mr. Yip”] and Mr. Chan Kwok Kai [“Mr. Chan”]. Mr. Yip is a Senior Town Planner. He told us that the Site was within the “GB” zone in S/NE-FTA/1 gazetted on 24th June, 1994. He reminded us of the planning intention pertaining to the “GB” zone. He pointed out that the Appellant had submitted no evidence to demonstrate that the proposed use accords with the Town Planning Board Guidelines No. 10 for “Application for Development within Green Belt under section 16 of the Town Planning Ordinance” and the Town Planning Board Guidelines No. 13C for “Open Storage and Port Back-up Uses under section 16 of the Town Planning Ordinance”. He explained that no similar application had been approved in the vicinity.
9. Mr. Chan is a Senior Engineer with the Transport Department. He told us that the Site is accessible by a track off Man Kam To Road. The section adjoining Man Kam To

Road is about 4 m wide. It has not been properly maintained and there is no walkway for pedestrians on either side. The track reduces in width to about 2 m wide when it is about 100 m from the Site. It is not paved. In his view, the track is not suitable for use by heavy lorry or container vehicle.

10. We have no doubt that there is no justification for us to differ from the Town Planning Board and the RNTPC. According to an aerial photo dated 27th February, 2003, the Site and its surrounding areas were covered with green vegetation. Subsequent aerial photos show extensive clearance in the Site and in its surrounding areas. Trees on Government land were cut without proper authority. 61% of the area so cleared is Government land and the Site takes up the remaining 39%. The aerial photos also bring home to us the importance of the “GB” zone and the need for its preservation. The Appellants had not submitted any evidence to persuade us that the planning intention behind the “GB” zone should not be observed. To approve this application would give encouragement to unauthorised clearance for the promotion of personal as opposed to public interests. We further accept the evidence of Mr. Chan. The Appellants failed to satisfy us that there is proper access to the Site so as to permit the use sought.

11. Whilst we are sympathetic to the Appellants’ plight, we regret that we see no alternative but to dismiss the appeal.

Ms. Shen Shu O for the Appellants

Ms. Jenny Fung (Senior Government Counsel) for the Respondent